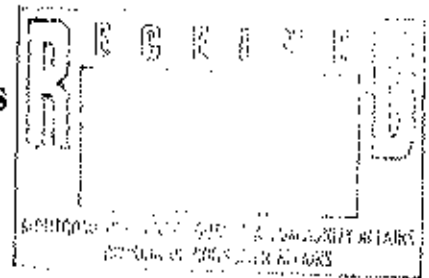


**BEFORE THE COMMISSION
ON COMMON OWNERSHIP COMMUNITIES
MONTGOMERY COUNTY, MARYLAND**



BILLY T. LEE

Complainant

vs.

GREEN HILLS FARM
HOMEOWNERS ASSOCIATION

Respondent

Case No. 624-0

DECISION AND ORDER

The above-entitled case having come before the Commission on Common Ownership Communities for Montgomery County, Maryland, pursuant to Sections 10B-5(I), 10B9(a), 10B-10, 10B-11(e), 10B-12, and 10B-13 of the Montgomery County Code, 1994, as amended, and the Commission having considered the testimony and other evidence of record, it is therefore this 17th day of November, 2004, found, determined and ordered as follows:

BACKGROUND

Billy T. Lee is a homeowner in the Green Hills Farm Homeowners Association ("the Association"). Green Hills Farm is typical of most, if not all, homeowners associations in that its covenants contain a provision that places use restrictions on the property within the community. Most of these use restrictions, including those in the Green Hills Farm documents, prohibit changes and/or additions without prior approval by the Board of Directors of the association or by a duly appointed Architectural and Environmental Review Committee.

This dispute centers around driveway pillars and what may or may not be placed on them. Mr. Lee placed cement oriental lion dog statues on top of the pillars at the end of his driveway. This statuary was installed in early 1991. In July and September 1991, Mr. Lee received letters from Elm Street Development informing him that the statues "are in violation of the Covenants as stated above and are not approved." The letters ordered Mr. Lee to remove the statues "and return the pillars to their original condition." Mr. Lee responded, on September 21, 1991, objecting to the order, arguing that numerous other homeowners had made changes without obtaining approval. On October 28, 1991, Elm Street responded, indicating that Mr. Lee raised

"some valid concerns" and suggesting that they "try to resolve the issues." On November 12, 1991, Mr. Lee responded to the letter from Elm Street ending with the suggestion that "Elm Street Development drop this matter or agree to submit [the] case for arbitration at the Office of Common Ownership Communities." There is nothing in the record to indicate Elm Street responded to this statement.

Mr. Lee next heard from the Association regarding the statues on December 16, 2002, when the President of Green Hills Farm Homeowners Association wrote indicating that the Association was "identifying covenants [sic] compliance issues" and discovered that "a previous violation of which you were informed has gone un-rectified." The Association gave Mr. Lee until January 31, 2003, to remove the statues or the Association would impose a \$25 fine for each day the violation exists. Numerous correspondences between Mr. Lee and the Association failed to resolve the issues. Mr. Lee again suggested that if the Association did not accept the statues as approved that the issues should be resolved "through arbitration" through the Commission on Common Ownership Communities. On February 24, 2003, the Association responded that it "has no intention of pursuing this matter through arbitration" and it would impose the \$25 fine for every day the "violation exists after February 28." On March 4, 2003, Mr. Lee filed his complaint with the Commission.

DISCUSSION

Green Hills Farm Homeowners Association operates under a set of documents called the Declaration of Covenants, Conditions and Restrictions. The Association argues that under this document, Article VII §§ 1 and 8, the Association has the authority to order Mr. Lee to remove the statues. This would be true if the Association, or its predecessor Elm Street Development, properly promulgated and noticed the Covenants. The Maryland Homeowners Association Act, Md. Code Ann. Real Prop. §§ 11B-101 through 113, mandates that homeowners associations deposit their governing documents in the county depository. Failure to place the governing documents in the depository renders the documents unenforceable until such time as they are deposited. Green Hill Farms did not place the appropriate documents into the depository until September 4, 2003. Therefore, they were not enforceable until that date.

At the hearing the Association asked if the covenants would be enforceable after the date they were deposited. The answer is yes. However, that does not allow the Association to enforce against actions taken by homeowners prior to September 4, 2003. Therefore, Mr. Lee may keep the lion-dog statuary on his driveway pillars.

The second reason why Mr. Lee will be allowed to keep the statues rises in equity. In 1991, Elm Street Development notified Mr. Lee that he needed to remove the statues. They made no effort to enforce that order. The question becomes when does such an order become stale and unenforceable. Fortunately, this panel does not need to draw a bright line to answer that question, all it needs to find is that eleven years is too long. An Association cannot order a homeowner to correct a violation, sit on its hands for more than a decade and then reopen the case. The prejudice to the homeowner is significant while the detriment to the association is minimal – after all nobody was willing to do anything about the alleged violation for more than a decade.

Finally, the panel wants to note two other troubling aspects of the Associations actions. First, the Association imposed a fine on Mr. Lee in violation of the Covenants. While the Covenants allow the imposition of fines, they mandate that there be the opportunity for a hearing prior to imposing the fine. Furthermore, the concept of due process requires that anytime a governing body imposes sanctions that the alleged violator be given the chance to speak in his defense. That did not happen here. The fine was imposed without any hearing. Such action is arbitrary and capricious and a violation of due process. Even if the panel ordered the statues removed, the fine would be disallowed. Second, the Association's statement that it refused to participate in "arbitration" before the Commission demonstrates a lack of understanding regarding the governance of homeowners associations. It also demonstrates the potential for the type of arrogance that gives homeowners associations a bad name. The panel hopes the Association has learned from this experience that homeowners association rules can be enforced in a neighborly way.

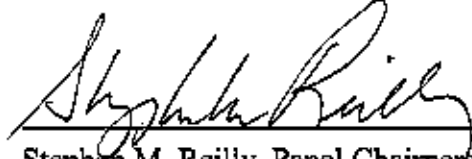
ORDER

In view of the foregoing, and based on the record, for the reasons set forth above, the Commission finds:

That Mr. Lee's statuary on the driveway pillars is deemed approved. The Association's attempt to impose a fine against Mr. Lee is void. Each party is responsible for its own attorney fees and other costs associated with this action.

The foregoing was concurred in by panel members Huggins, Smith and Reilly.

Any party aggrieved by the action of the Commission may file an administrative appeal to the Circuit Court of Montgomery County, Maryland within thirty (30) days from the date of this Order, pursuant to the Maryland Rules of Procedure governing administrative appeals.

A handwritten signature in black ink, appearing to read "Stephen M. Reilly", is written over a horizontal line.

Stephen M. Reilly, Panel Chairperson
Commission on Common Ownership
Communities